

***Form 7500***

**General Provisions  
for Subcontracts  
Section D**

**July 2000**

***LOS ALAMOS***

**Los Alamos National Laboratory**

**Los Alamos, NM 87545**

## Form 7500, Section D

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### Section D Clauses Apply to Cost Reimbursement Types Subcontracts.

The clauses listed below apply to cost reimbursement type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

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## D1, Allowable Cost and Payment

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks, in amounts determined to be allowable by the University in accordance with Subpart 31.2 of the FAR, as supplemented by Subpart 931.2 of the DEAR, in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract. Time permitted for payment shall begin on the later of receipt of material or the date the invoice is received at LANL Accounts Payable (Los Alamos National Laboratory, Accounts Payable, Mail Stop P240, P.O. Box 1663, Los Alamos, NM 87545).
  
- (b) *Reimbursing costs.*
  - (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only-
    - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for goods or services purchased directly for the subcontract;
    - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-
      - (A) Goods issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
      - (B) Direct labor;
      - (C) Direct travel;
      - (D) Other direct in-house costs; and
      - (E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for obtaining reimbursement under Government contracts and University subcontracts; and
    - (iii) The amount of progress, payments that have been paid to the Subcontractor's lower-tier subcontractors under similar cost standards.
  - (2) Subcontractor contributions to any pension, profit-sharing, or funds for a plan for ownership of stock by employees that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the Subcontractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not

be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect cost for payment purposes until the Subcontractor actually makes the payment.

- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
  - (4) Any statement in specifications or other documents incorporated in this subcontract by reference and designating performance of services or furnishing of goods at the Subcontractor's expense or at no cost to the University shall be disregarded for reimbursement of costs under this clause.
- (c) *Small Business Concerns.* A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for goods or services purchased directly for the subcontract, even though the small business concern has not yet paid for those goods or services.
- (d) *Final Indirect Cost Rates.*
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR for the period covered by the indirect cost rate proposal.
  - (2) Within 90 days after the expiration of each of its fiscal years or by a later date approved by the University, the Subcontractor shall submit to the University and the cognizant Government Contracting Officer responsible for negotiating its final indirect cost rates and to the cognizant audit activity (1) the rates of the proposed final indirect cost rates for that period and (2) supporting cost data specifying the subcontract to which the rates apply. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The University, the Government Contracting Officer, and the Subcontractor shall establish the final indirect cost rates as promptly as practicable after receipt of the Subcontractor's proposal.
  - (3) The Subcontractor and the University or the Government Contracting Officer shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower-tier subcontract and shall identify any with advance agreements or special terms and the applicable rate. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into the subcontract upon execution.
  - (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of the subcontract.

- (e) *Billing Rates.* Until final, annual indirect cost rates are established for any period, the University shall reimburse the Subcontractor at billing rates established by the University or by the cognizant auditor and are subject to adjustment when the final rates are established. These billing rates
  - (1) Shall be the anticipated final rates; and
  - (2) At either party's request, may be prospectively or retroactively revised by mutual agreement to prevent substantial overpayment or underpayment.
- (f) *Quick-closeout Procedures.* When the Subcontractor and the University agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) *Audit.* At any time or times before final payment, the University may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the University not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) *Final Payment.*
  - (1) The Subcontractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work but no later than one year from the completion date (or longer, as the University may approve in writing). Upon approval of that invoice or voucher and upon the Subcontractor's compliance with all terms of the subcontract, the University shall promptly pay any balance of allowable costs and that part of the fee, if any, not previously paid.
  - (2) The Subcontractor shall pay to the University any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under the subcontract to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by the University. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the University. Before final payment under the subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver
    - (i) An assignment to the University, in form and substance satisfactory to the University, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by the University under this subcontract; and
    - (ii) A release discharging the University, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the subcontract, except
      - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
      - (B) Claims, including reasonable incidental expenses, based upon liabilities of the Subcontractor to third parties arising out of the performance of the subcontract, provided that the claims are not known to the Subcontractor on the date of the execution of the

release and that the Subcontractor gives notice of the claims in writing to the University within six years following the release date or notice of final payment date, whichever is earlier; and

- (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of the subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of the University and the Government against patent liability.

## **D2, Modification of Clause D1, Allowable Cost and Payment for Educational Institutions**

*Substitute paragraph (a) below in place of paragraph (a) of clause D1.*

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks in amounts determined to be allowable by the University in accordance with Subpart 31.3 of the FAR in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract. Time permitted for payment shall begin on the later of receipt of material or the date the invoice is received at LANL Accounts Payable (Los Alamos National Laboratory, Accounts Payable, Mail Stop P240, P.O. Box 1663, Los Alamos, NM 87545).

## **D3, Modification of Clause D1, Allowable Cost and Payment For Nonprofit Organizations Other Than Educational Institutions**

*Substitute paragraph (a) below in place of paragraph (a) of clause D1.*

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks in amounts determined to be allowable by the University in accordance with Subpart 31.7 of the FAR in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract. Time permitted for payment shall begin on the later of receipt of material or the date the invoice is received at LANL Accounts Payable (Los Alamos National Laboratory, Accounts Payable, Mail Stop P240, P.O. Box 1663, Los Alamos, NM 87545).

## **D4, Changes, Research and Development**

- (a) The University may at any time by written change order and without notice to the sureties, if any, make changes within the general scope of the subcontract in any one or more of the following:
  - (1) Drawings, designs, or specifications.
  - (2) Method of shipment or packing; or
  - (3) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

## D5, Changes, Services

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  - (1) Description of services to be performed.
  - (2) **Time** of performance (e.g., hours of the day, days of the week, etc.).
  - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.

- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

## **D6, Changes, Supplies and Services**

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  - (1) Description of services to be performed.
  - (2) Time of performance (e.g., hours of the day, days of the week, etc.).
  - (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
  - (5) Method of shipment or packing of supplies.
  - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether of not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.



- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

## **D7, Changes, Supplies**

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  - (1) Drawings, designs, or specifications when the supplies are to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
  - (2) Method of shipment or packing.
  - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

## **D8, Cost Subcontract - No Fee**

- (a) The University shall not pay the Subcontractor a fee for performing the subcontract.

- (b) After payment of 80 percent of the total estimated cost shown in the Schedule, the University may withhold further payment of allowable cost until a reserve is set aside in an amount that the University considers necessary to protect its interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

## **D9, Cost-Sharing Subcontract - No Fee**

- (a) The University shall not pay the Subcontractor a fee for performing the subcontract.
- (b) After paying 80 percent of the University's share of the total estimated cost of performance shown in the Schedule, the University may withhold further payment of allowable cost until a reserve is set aside in an amount that the University considers necessary to protect its interest. This reserve shall not exceed one percent of the University's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

## **D10, Excusable Delays**

- (a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress; and if the cause of the failure is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless
  - (1) The lower-tier subcontracted goods or services were obtainable from other sources;
  - (2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and
  - (3) The Subcontractor failed to comply reasonably with this order.
- (c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the University under the Termination clause of this subcontract.

## D11, Fixed Fee

- (a) The University shall pay the Subcontractor for performing this subcontract the fixed fee specified in the schedule.
- (b) Payment of the fixed fee shall be made as specified in the schedule, provided that after payment of 85 percent of the fixed fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

## D12, Incentive Fee

- (a) *General.* The University shall pay the Subcontractor for performing the subcontract a fee determined as provided in the subcontract.
- (b) *Target Cost and Target Fee.* The target cost and target fee specified in the schedule are subject to adjustment if the subcontract is modified in accordance with paragraph (d) below. (1) "Target cost" as used in the subcontract means the estimated cost of this subcontract as initially negotiated, adjusted in accordance with paragraph (d) below. (2) "Target fee" as used in the subcontract means the fee initially negotiated on the assumption that this subcontract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.
- (c) *Withholding of Payment.* Normally, the University shall pay the fee to the Subcontractor as specified in the schedule. However, when the University considers that performance or cost indicates that the Subcontractor will not achieve the target cost, the University shall pay on the basis of an appropriate lesser fee. When the Subcontractor demonstrates that performance or cost clearly indicates that the Subcontractor will earn a fee significantly above the target fee, the University may, at its sole discretion, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less.
- (d) *Equitable Adjustments.* When the work under the subcontract is increased or decreased by a modification to the subcontract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to the subcontract.
- (e) *Fee Payable.*
  - (1) The fee payable under the subcontract shall be the target fee increased by \* cents for every dollar that the total allowable cost is less than the target cost or decreased by \* cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than \* percent or less than \* percent of the target cost.

- (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased because of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause (Clause D1).
- (3) If the subcontract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of the subcontract.
- (4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of
  - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Subcontractor or any lower-tier subcontractor.
  - (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Subcontractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (iii) Any direct cost attributed to the Subcontractor's involvement in litigation as required by the University pursuant to a clause of the subcontract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
  - (iv) The purchase and maintenance of additional insurance not in the target cost and required by the University, or claims for reimbursement for liabilities to third persons pursuant to the Work on University or Government Premises clause, if made a part of the subcontract.
  - (v) Any claim, loss, or damage resulting from a risk for which the Subcontractor has been relieved of liability by the Property clause; or
  - (vi) Any claim, loss, or damage resulting from a risk defined in the subcontract as unusually hazardous or defined as a nuclear risk and against which the University has expressly agreed to indemnify the Subcontractor.
- (5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided for in the subcontract.
- (f) *Subcontract Modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to the subcontract signed by the Subcontractor and the University.
- (g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this subcontract, compensation for

spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

*\* The amounts to be entered in the blank spaces will be identified in the schedule when this clause is used.*

## **D13, Inspection of Research and Development**

(a) **Definitions.**

*"Subcontractor's managerial personnel, "* as used in this clause means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with performing the subcontract.

*"Work, "* as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the work under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all work called for by the subcontract to the extent practicable and at all places and times, including the period of performance and in any event before acceptance. The University may also inspect the facility or facilities of the Subcontractor or its lower-tier subcontractors engaged in performance of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise provided in the subcontract, the University shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.
- (f) At any time during subcontract performance, but no later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University may require the Subcontractor to replace or correct work not meeting subcontract

requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

- (g)
  - (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may
    - (i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the subcontract;
    - (ii) Require delivery of any undelivered goods and shall have the right to make an equitable reduction in any fixed fee paid or payable under the subcontract; or
    - (iii) Terminate the subcontract for default.
  - (2) Failure to agree on the amount of increased cost to be charged the Subcontractor or to the reduction in fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause shall apply in the same manner to corrected or replacement goods as to work originally delivered.
- (j) The Subcontractor has no obligation or liability under the subcontract to correct or replace goods not meeting subcontract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the subcontract.
- (k) Unless otherwise provided in the subcontract, the Subcontractor's obligations to correct or replace Government property shall be governed by the clause pertaining to Government property.

## **D14, Modification of Clause D13 For a No Fee Subcontract**

*Substitute paragraphs (f) and (g) below in place of paragraphs (f) and (g) of Clause D12.*

- (f) At any time during subcontract performance but not later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University

may require the Subcontractor to correct or replace work not meeting subcontract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Subcontractor shall not tender for acceptance any corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

- (g) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may (1) by subcontract or other means, perform the replacement or correction and charge to the Subcontractor any increased cost, (2) require delivery of any undelivered goods, or (3) terminate the subcontract for default. Failure to agree on the amount of increased cost to be charged to the Subcontractor shall be a dispute under the Disputes clause of this subcontract..

## D15, Inspection of Services

- (a) **Definition.** "*Services*, " as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with subcontract requirements, the University may require the Subcontractor to perform the services again in conformity with subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the University may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce any fee payable under the subcontract to reflect the reduced value of the services performed.
- (e) If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with subcontract requirements, the University may (1) by subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the subcontract for default

## D16, Inspection of Supplies

- (a) **Definitions.**

*"Subcontractor's managerial personnel,"* as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of -

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at a plant or separate location at which the subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with performing the subcontract.

*"Supplies,"* as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and when the subcontract does not include the Warranty of Data clause, data.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the supplies, fabricating methods, and special tooling under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test the subcontract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The University may also inspect the plant or plants of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspection or test on the premises of the Subcontractor or lower-tier subcontractor, the Subcontractor shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the subcontract, the University shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.
- (f) At any time during subcontract performance, but no later than 6 months (or such other time as may be specified in the subcontract) after acceptance of the supplies to be delivered under the subcontract, the University may require the Subcontractor to replace or correct any supplies that are nonconforming at the time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may -



- (i) By subcontract or otherwise, perform the replacement or correction and charge to the Subcontractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the subcontract;
  - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the subcontract; or
  - (iii) Terminate the subcontract for default.
- (2) Failure to agree on the amount of increased cost to be charged to the Subcontractor or to the reduction in the fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to correct or replace, without cost to the University, nonconforming supplies, if the nonconformances are due to
  - (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel or
  - (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- (j) The Subcontractor shall have no obligation or liability under the subcontract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the subcontract.
- (k) Except as otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace University furnished property shall be governed by the clause pertaining to Government property.

## **D17, Limitation of Cost**

- (a) The parties estimate that performance of the subcontract, exclusive of any fee, will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if this is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this subcontract within the estimated cost that, if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.
- (b) The Subcontractor shall notify the University in writing whenever it has reason to believe that

- (1) The costs the Subcontractor expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or
  - (2) The total cost for the performance of the subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the Subcontractor shall provide the University a revised estimate of the total cost of performing the subcontract.
- (d) Except as required by other provisions of the subcontract, specifically citing and stated to be an exception to this clause
  - (1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of (i) the estimated cost specified in the schedule or, (ii) if this is a cost-sharing subcontract, the estimated cost to the University specified in the schedule; and
  - (2) The Subcontractor is not obligated to continue performance under the subcontract (including actions under the Termination clause) or otherwise incur costs in excess of the estimated cost specified in the schedule, until the University (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing the subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.
- (e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) above or from any person other than the Contract Administrator shall affect the subcontract's estimated cost to the University. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the estimated cost or, if the subcontract is a cost-sharing subcontract, for any costs exceeding the estimated cost to the University specified in the schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.
- (f) If the estimated cost specified in the schedule is increased, any costs the Subcontractor incurs before the increase that exceed the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the University issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Change orders shall not be considered an authorization to exceed the estimated cost to the University specified in the schedule unless they contain a statement increasing the estimated cost.
- (h) If the subcontract is terminated or if the estimated cost is not increased, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract based upon the share of costs incurred by each.

## **D18, Limitation of Funds**

- (a) The parties estimate that performance of the subcontract will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if the subcontract is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within the estimated cost that if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.
- (b) The schedule specifies the amount presently available for payment by the University and allotted to the subcontract, the items covered, the University's share of the cost if the subcontract is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the University will allot additional funds incrementally to the subcontract up to the full estimated cost to the University specified in the schedule, exclusive of any fee. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which the total amount paid and payable by the University under the subcontract approximates but does not exceed the total amount actually allotted by the University to the subcontract.
- (c) The Subcontractor shall notify the University in writing whenever it has reason to believe that the costs it expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the subcontract by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount then allotted to the subcontract by the University plus the Subcontractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.
- (d) Sixty days before the end of the period specified in the schedule, the Subcontractor shall notify the University in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the schedule or otherwise agreed upon and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the schedule or another agreed-upon date, upon the Subcontractor's written request the University will terminate the subcontract on that date in accordance with the provisions of the Termination clause of the subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the University may terminate the subcontract on that later date.
- (f) Except as required by other provisions of the subcontract, specifically citing and stated to be an exception to this clause
  - (1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the University to the subcontract; and
  - (2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of the subcontract) or otherwise incur costs exceeding (i) the amount then allotted to the subcontract by the University or, (ii) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, until the University notifies the Subcontractor in writing that the amount allotted by the University has been

increased and specifies an increased amount, which shall then constitute the total amount allotted by the University to the subcontract.

- (g) The estimated cost shall be increased to the extent that
  - (1) the amount allotted by the University or,
  - (2) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the schedule. If the subcontract is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.
- (h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) above or from any person other than the Contract Administrator, shall affect the amount allotted by the University to the subcontract. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the total amount allotted by the University to the subcontract, whether incurred during the course of the subcontract or because of termination.
- (i) When and to the extent that the amount allotted by the University to the subcontract is increased, any costs the Subcontractor incurs before the increase that exceed (1) the amount previously allotted by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount previously allotted by the University to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the University issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the University specified in the schedule unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the University to terminate this subcontract. If this subcontract is terminated, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- (l) If the University does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by the subcontract.

## **D19, Lower-Tier Subcontracts**

- (a) *"Lower-tier subcontract"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if
  - (1) The proposed lower-tier subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

- (2) The proposed lower-tier subcontract is fixed-price and exceeds either \$25,000 or five percent of the total estimated costs of the subcontract;
  - (3) The proposed lower-tier subcontract has experimental, developmental, or research work as one of its purposes; or
  - (4) The subcontract is not a facilities subcontract and the proposed lower-tier subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or acquisition of any items of industrial facilities.
- (b) (1) In the case of a proposed lower-tier subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$25,000, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract and for the same or related goods or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in paragraph (2) below.
- (2)
    - (i) A description of the goods or services to be subcontracted;
    - (ii) Identification of the type of subcontract to be used;
    - (iii) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;
    - (iv) The proposed subcontract price and the Subcontractor's cost or price analysis;
    - (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions;
    - (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract;
    - (vii) A negotiation memorandum reflecting
      - (A) The principal elements of the lower-tier subcontract price negotiations;
      - (B) The most significant considerations controlling establishment of initial or revised prices;
      - (C) The reason cost or pricing data were or were not required;
      - (D) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price.

- (E) The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
  - (F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
  - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (c) The Subcontractor shall obtain the University's written consent before placing any lower tier subcontract for which advance notification is required under paragraph (a) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.
- (d) If the Subcontractor has an approved purchasing system and if the lower-tier subcontract is within the scope of such approval, the Subcontractor may enter into the lower-tier subcontracts described in paragraphs (a)(1) and (a)(2) above without the consent of the University, unless the subcontract is for the acquisition of major systems, subsystems, or their components.
- (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and identified in the schedule of the subcontract.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any lower-tier cost under the subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.
- (g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
- (h) The Subcontractor shall give the University immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to the subcontract with respect to which the Subcontractor may be entitled to reimbursement from the University.
- (i) (1) The Subcontractor shall insert in each price redetermination or incentive price revision type lower-tier subcontract under the subcontract the substance of the paragraph "Quarterly Limitation on Payments Statement" from the appropriate clause: Price Redetermination - Prospective (FAR 52.216-5), Price Redetermination - Retroactive (FAR 52.216-6), Incentive Price Revision - Firm

Target (FAR 52.216-16), or Incentive Price Revision Successive Targets clause (FAR 52.216-17). The substance included shall be modified in accordance with the paragraph entitled "Subcontracts" of the appropriate clause.

- (2) The Subcontractor shall also include in each cost-reimbursement lower-tier subcontract under the subcontract a requirement that the lower-tier subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower-tier price redetermination or incentive price revision subcontract under that lower-tier subcontract.
- (j) To facilitate small business participation in subcontracting, the Subcontractor agrees to provide progress payments on lower-tier subcontracts under the subcontract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of the subcontract. The Subcontractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.
- (k) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

## **D20, Notice of Intent to Disallow Costs**

- (a) Notwithstanding any other clause of the subcontract
  - (1) At any time, the University may issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under the subcontract that have been determined not to be allowable under the subcontract terms; and
  - (2) After receiving a notice under subparagraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor responds within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

## **D21, Payment for Overtime Premiums**

- (a) The use of overtime is authorized under the subcontract if the overtime premium cost does not exceed the dollar amount identified in the schedule. In addition to this dollar ceiling, overtime is permitted only for work
  - (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

- (2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
  - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in Right or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  - (4) That will result in lower overall costs to the University.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for subcontract completion and shall
- (1) Identify the work unit, e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the University to evaluate the necessity for the overtime;
  - (2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule.
  - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other University subcontracts, together with identification of each affected subcontract; and
  - (4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

## D22, Property

- (a) University furnished Government property.
- (1) The term "Subcontractor's managerial personnel," as used in paragraph (c) of this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-
    - (i) All or substantially all of the Subcontractor's business;
    - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
    - (iii) A separate and complete major industrial operation connected with performing- the subcontract.
  - (2) The University shall deliver to the Subcontractor, for use in connection with and under the terms of the subcontract, the Government property described in the Schedule together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "University-furnished property).



- (3) The delivery or performance dates for the subcontract are based upon the expectation that University furnished property suitable for use will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
  - (4) If University-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the University Contract Administrator, detailing the facts, and, as directed by the University Contract Administrator, and at University expense, either effect repairs or modification or return or otherwise dispose of the property. After completing directed action and upon written request of the Subcontractor, the University shall make an equitable adjustment as provided in paragraph (h) of this clause.
  - (5) If University-furnished property is not delivered to the Subcontractor by the required time or times, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (b) Changes in University-furnished property.
- (1) The University may, by written notice,
    - (i) decrease the University-furnished property provided or to be provided under the subcontractor
    - (ii) substitute other University-furnished property for the property to be provided by the University or to be acquired by the Subcontractor for the Government under this subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment or disposal of the property covered by this notice.
  - (2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the schedule to make such property available for performing the subcontract and there is any-
    - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
    - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.
- (c) Title.
- (1) The Government shall retain title to all University-furnished property.
  - (2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.

- (3) Title to all other property, the cost of which is reimbursable to the Subcontractor. shall pass to and vest in the Government upon-
  - (i) Issuance of the property for use in subcontract performance;
  - (ii) Commencement of processing of the property for use in subcontract performance; or
  - (iii) Reimbursement of the cost of the property by the University, whichever occurs first.
- (d) Use of Government property. The Government property, shall be used only for performing the subcontract under which it is provided to the Subcontractor, unless otherwise provided in the subcontract or approved by the University Contract Administrator.
- (e) Property administration-
  - (1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of the subcontract.
  - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection. and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
  - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University Contract Administrator. When any property for which the Government is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) Access. The Government and the University and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
  - (1) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
  - (2) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)-

- (i) That results from a risk expressly required to be insured under the subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
  - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (3)
- (i) If the Subcontractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
  - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage-
    - (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or
    - (B) Occurred while an approved program or system was maintained by the Subcontractor.
- (4) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the University Contract Administrator, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.

- (5) Upon loss or destruction of, or damage to, Government property provided under the subcontract, the Subcontractor shall so notify the University Contract Administrator and shall communicate with the loss and salvage organization, if any, designated by the University Contract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order. and furnish to the University Contract Administrator a statement of-
- (i) The lost, destroyed, or damaged Government property;
  - (ii) The time and origin of the loss, destruction, or damage;
  - (iii) All known interests in commingled property of which the Government property is a part; and
  - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University Contract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the University Contract Administrator, sell such property for the account of the University. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the University may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such adjustment.
- (7) The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost, of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.
- (8) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the University as directed by the University Contract Administrator.
- (9) The Subcontractor shall do nothing to prejudice the Government's or University's rights to recover against third parties for any loss or destruction of, or damage

to, Government property. Upon the request of the University Contract Administrator, the Subcontractor shall, at the University's expense, furnish to the Government or the University all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government or the University) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Government and/or the University, the liability of the lower-tier subcontractor for such loss, destruction, or damage.

- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the University may initiate an equitable adjustment in favor of the University. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Government and the University shall not be liable to suit for breach of contract for-

- (1) Any delay in delivery of University-furnished Government property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of University-furnished Government property; or
- (4) Failure to repair or replace Government property for which the University is responsible.

- (i) Final accounting and disposition of Government property. Upon completing the subcontract, or at such earlier dates as may be fixed by the University Contract Administrator, the Subcontractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University Contract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or paid to the University as directed by the University Contract Administrator. The foregoing provisions shall apply to scrap from Government property; provided, however, that the University Contract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

- (j) Abandonment and restoration of Subcontractor premises. Unless otherwise provided herein, the University-

- (1) May abandon any Government property in place, at which time all obligations of the Government and University regarding such abandoned property shall cease; and

- (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the University-furnished Government property (listed in the Schedule) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

## **D23, Stop-Work Order**

- (a) At any time and by written order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
  - (1) Cancel the stop-work order or
  - (2) Terminate the work covered by the stop-work order as provided in the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified in writing accordingly if
  - (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
  - (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim submitted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- (d) If a stop-work order is not canceled and the work covered by the work order is terminated for default, the University shall allow by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **D24, Termination**

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if
  - (1) the University determines that a termination is in the University's or the Government's interest; or
  - (2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The University shall terminate by delivering to the Subcontractor a Notice of termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination were for the convenience of the University.
- (c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.
  - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated. In which case the University or the Government shall have the right to settle or to pay any termination settlement or proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval or ratification will be final for purposes of this clause.

- (6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the subcontract, the cost of which the Subcontractor has been or will be reimbursed under the subcontract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract and that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (1) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or part in any other manner directed by the University.
- (d) After expiration of the "plant clearance period," as defined in Subpart 45.6 of the FAR, the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.



- (g) If the Subcontractor and the University fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination or work, the University shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay that amount, which shall include the following:
- (1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contract Administrator; however, the Subcontractor shall discontinue these costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract is not included in subparagraph (1) above.
  - (3) The reasonable costs of settlement of the work terminated, including —
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
  - (4) A portion of the fee payable under the subcontract, determined as follows:
    - (i) If the subcontract is terminated for the convenience of the University, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in the Subcontractor's termination proposals, less previous payments for fee.
    - (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the University is to the total number of articles (or amount of services) of a like kind required by the subcontract.
  - (5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.
- (h) The cost principles and procedures in Part 31 of the FAR in effect on the date of this subcontract shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to

request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g) or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

- (j) In arriving at the amount due the Subcontractor under this clause, the University shall deduct
  - (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;
  - (2) Any claim that the University has against the Subcontractor under the subcontract; and
  - (3) The agreed price for, or the proceeds of sale of materials, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the University.
- (k) The Subcontractor and the University must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Contract Administrator shall amend the subcontract to reflect the agreement.
- (l)
  - (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary or the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in-the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

## **D25, Disposition of Material**

Title to all goods and materials purchased with subcontract funds shall vest in the Government. The Subcontractor shall make disposition of all residual goods and materials in accordance with the instructions provided by the University.